

Florida State Tax Reporter, Florida, Sec. 212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions

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FLORIDA STATUTES, TITLE XIV TAXATION AND FINANCE, CHAPTER 212 TAX ON SALES, USE, AND OTHER TRANSACTIONS

212.07(1)

212.07(1)(a) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

212.07(1)(b) A resale must be in strict compliance with [s. 212.18](#) and the rules and regulations, and any dealer who makes a sale for resale which is not in strict compliance with [s. 212.18](#) and the rules and regulations shall himself or herself be liable for and pay the tax. Any dealer who makes a sale for resale shall document the exempt nature of the transaction, as established by rules promulgated by the department, by retaining a copy of the purchaser's resale certificate. In lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number provided telephonically or electronically by the department, or by such other means established by rule of the department. The dealer may rely on a resale certificate issued pursuant to [s. 212.18\(3\)\(c\)](#), valid at the time of receipt from the purchaser, without seeking annual verification of the resale certificate if the dealer makes recurring sales to a purchaser in the normal course of business on a continual basis. For purposes of this paragraph, "recurring sales to a purchaser in the normal course of business" refers to a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash or C.O.D. account, similar to an open credit account. For purposes of this paragraph, purchases are made from a selling dealer on a continual basis if the selling dealer makes, in the normal course of business, sales to the purchaser no less frequently than once in every 12-month period. A dealer may, through the informal protest provided for in [s. 213.21](#) and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. Consumer certificates of exemption executed by those exempt entities that were registered with the department at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the department of a purchaser's active dealer status at the time of sale in lieu of a resale certificate shall be accepted by the department when submitted during the protest period, but may not be accepted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

212.07(1)(c) Unless the purchaser of tangible personal property that is incorporated into tangible personal property manufactured, produced, compounded, processed, or fabricated for one's own use and subject to the tax imposed under [s. 212.06\(1\)\(b\)](#) or is purchased for export under [s. 212.06\(5\)\(a\)](#)1. extends a certificate in compliance with the rules of the department, the dealer shall himself or herself be liable for and pay the tax.

212.07(2) A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of the tax shall be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale. Such tax shall constitute a part of such price, charge, or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Where it is impracticable, due to the nature of the business practices within an industry, to separately state Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale, the department may establish an effective tax rate for such industry. The department may also amend this effective tax rate as the industry's pricing or practices change. Except as otherwise specifically provided, any dealer who neglects, fails, or refuses to collect the tax herein provided upon any, every, and all retail sales made by the dealer or the dealer's

agents or employees of tangible personal property or services which are subject to the tax imposed by this chapter shall be liable for and pay the tax himself or herself.

212.07(3) Any dealer who fails, neglects, or refuses to collect the tax herein provided, either by himself or herself or through the dealer's agents or employees, is, in addition to the penalty of being liable for and paying the tax himself or herself, guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

212.07(4) A dealer engaged in any business taxable under this chapter may not advertise or hold out to the public, in any manner, directly or indirectly, that he or she will absorb all or any part of the tax, or that he or she will relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property or services sold or released or, when added, that it or any part thereof will be refunded either directly or indirectly by any method whatsoever. A person who violates this provision with respect to advertising or refund is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

212.07(5)

212.07(5)(a) The gross proceeds derived from the sale in this state of livestock, poultry, and other farm products direct from the farm are exempted from the tax levied by this chapter provided such sales are made directly by the producers. The producers shall be entitled to such exemptions although the livestock so sold in this state may have been registered with a breeders' or registry association prior to the sale and although the sale takes place at a livestock show or race meeting, so long as the sale is made by the original producer and within this state. When sales of livestock, poultry, or other farm products are made to consumers by any person, as defined herein, other than a producer, they are not exempt from the tax imposed by this chapter. The foregoing exemption does not apply to ornamental nursery stock offered for retail sale by the producer.

212.07(5)(b) Sales of race horses at claiming races are taxable; however, if sufficient information is provided by race track officials to properly administer the tax, sales tax is due only on the maximum single amount for which a horse is sold at all races at which it is claimed during an entire racing season.

212.07(6) It is specifically provided that the use tax as defined herein does not apply to livestock and livestock products, to poultry and poultry products, or to farm and agricultural products, when produced by the farmer and used by him or her and members of the farmer's family and his or her employees on the farm.

212.07(7) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is exempted from any and all provisions of this chapter, including payment of the tax applicable to the sale, storage, use, or transfer, or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer; in no case shall more than one tax be exacted.

212.07(8) Any person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property, admissions, communication or other services taxable under this chapter, or leased tangible personal property, or who has leased, occupied, or used or was entitled to use any real property, space or spaces in parking lots or garages for motor vehicles, docking or storage space or spaces for boats in boat docks or marinas, and cannot prove that the tax levied by this chapter has been paid to his or her vendor, lessor, or other person is directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.

212.07(9)

212.07(9)(a) If a ³ purchaser engaging in transactions taxable under this chapter did not pay tax to a vendor based on a good faith belief that the transaction was a nontaxable purchase for resale

or the transaction was exempt as a purchase by an organization exempt from tax under this chapter, except as provided in paragraph (b), neither the purchaser nor the vendor is directly liable for any tax, interest, or penalty that would otherwise be due if the following conditions are met:

212.07(9)(a)1. At the time of the purchase, the purchaser was not registered as a dealer with the department or did not hold a consumer's certificate of exemption from the department.

212.07(9)(a)2. At the time of the purchase, the purchaser was qualified to register with the department as a dealer or to receive a consumer's certificate of exemption from the department.

212.07(9)(a)3. Before applying for treatment under this subsection, the purchaser has registered with the department as a dealer or has applied for and received a consumer's certificate of exemption from the department.

212.07(9)(a)4. The purchaser establishes justifiable cause for failure to register as a dealer or to obtain a consumer's certificate of exemption before making the purchase. Whether a purchaser has established justifiable cause for failure to register depends on the facts and circumstances of each case, including, but not limited to, such factors as the complexity of the transaction, the purchaser's business experience and history, whether the purchaser sought advice on its tax obligations, whether any such advice was followed, and any remedial action taken by the purchaser.

212.07(9)(a)5. The transaction would otherwise qualify as exempt under this chapter except for the fact that at the time of the purchase the purchaser was not registered as a dealer with the department or did not hold a consumer's certificate of exemption from the department.

212.07(9)(a)6. Relief pursuant to this subsection is applied for:

212.07(9)(a)6.a. Before the department has initiated any audit or other action or inquiry in regard to the purchaser or the vendor; or

212.07(9)(a)6.b. If any audit or other action or inquiry of the purchaser or the vendor has already been initiated, within 7 days after being informed in writing by the department that the purchaser was required to be registered or to hold a consumer's certificate of exemption at the time the transaction occurred.

212.07(9)(b) In lieu of the tax, penalties, and interest that would otherwise have been due, the department shall impose and collect the following mandatory penalties, which the department may not waive:

212.07(9)(b)1. If a purchaser or vendor applies for relief before the department initiates any audit or other action or inquiry, the mandatory penalty is the lesser of \$1,000 or 10 percent of the total tax due on transactions that qualify for treatment under this subsection.

212.07(9)(b)2. If a purchaser or vendor applies for relief after an audit or other action or inquiry has already been initiated by the department, the mandatory penalty is the lesser of \$5,000 or 20 percent of the total tax due on transactions that qualify for treatment under this subsection.

The department may impose and collect the mandatory penalties from either the purchaser or the vendor that failed to obtain proper documentation at the time of the transaction.

212.07(9)(c) The department may adopt forms and rules to administer this subsection.

(As added by Ch. 26319, Laws 1949; as amended by Ch. 28297, Laws 1953; Ch. 61-276, Laws 1961; Ch. 65-329, Laws 1965; Ch. 68-119, Laws 1968; Ch. 69-222, Laws 1969; Ch. 71-136, Laws 1971; Ch. 71-360, Laws 1971; Ch. 83-297, Laws 1983; Ch. 86-152, Laws 1986; Ch. 87-6, Laws 1987; Ch. 87-101, Laws 1987; Ch. 87-548, Laws 1987; Ch. 91-224, Laws 1991; Ch. 95-147, Laws 1995; Ch. 97-99, Laws 1997; Ch. 98-142, Laws 1998; Ch. 99-208, Laws 1999; Ch. 99-239, Laws 1999; Ch. 2002-218 (S.B. 426), Laws 2002, effective July 1, 2002.)

Footnotes

3 Sec. 16 of Ch. 2002-218 (S.B. 426), Laws 2002, provides:

"It is the intent of the Legislature that [section 212.07\(9\)](#), Florida Statutes, created by this act, applies to all pending sales and use tax audits or other actions or inquiries, including those currently under protest or in litigation. Taxpayers in such pending audits or other actions or inquiries have until the later of the date provided by [section 212.07\(9\)\(b\)](#), Florida Statutes, or 90 days after the effective date of this act to apply for the treatment provided in such paragraph. This section does not create any right to refund for taxes previously assessed and paid in regard to audits or other actions or inquiries that are no longer pending." CCH.